Sazali bin Jemali v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO A-05–374 OF 2010
ABDUL MALIK ISHAK, AZAHAR MOHAMED AND ZAWAWI SALLEH JJCA
23 OCTOBER 2013

Evidence — Information leading to fact discovered — Admissibility depends on voluntariness — Whether trial judge's ruling that accused gave information voluntarily incorrect — Whether circumstances showed information extracted unfairly and oppressively — Whether trial court ought to have rejected information made by accused to preserve fairness of proceedings — Evidence Act 1950 s 27

The appellant was convicted and sentenced to death by the High Court on two charges of trafficking in cannabis under s 39B(1)(a) of the Dangerous Drugs Act 1952. The first charge concerned 769g of cannabis whilst the second charge concerned 7,415g of the drug. Concerning the first charge, it was the prosecution's case that a police party acting on information spotted the appellant driving alone in a car entering a lane near a school about 7.45 one evening. The police blocked both ends of the lane with their vehicles. The appellant tried to reverse his car out of the lane but collided into one of the police vehicles. It was in evidence that despite a senior police officer identifying himself to the appellant, the latter refused to get out of the vehicle and locked himself in, forcing the officer to break the door window and arrest the appellant. The police found the cannabis in an envelope under the driver's seat as well as in a box near the handbrake. The appellant was then brought to the police station and interrogated and about 3 1/2 hours later, with the information they had extracted from him, the appellant was taken to his house where he allegedly pointed out to police the existence of more cannabis kept in a gunny sack in the kitchen. In his instant appeal against conviction and sentence, the appellant denied he had any knowledge of the drugs and that at worst, he should only have been found guilty of possession and not trafficking. He also submitted that the trial judge should have excluded the information obtained from him during interrogation as it was obtained unfairly and under oppressive circumstances. The trial court ruled during a trial-within-a-trial that the information given by the appellant was voluntarily made.

Held, dismissing the appeal against the first charge and affirming the conviction and sentence thereto and setting aside the conviction and sentence in respect of the second charge:

(1) There was insufficient judicial appreciation by the trial judge of the

evidence before him as to the voluntariness of the information given by the appellant under s 27 of the Evidence Act 1950. Following the ambush by the police party on the car about 7.45pm, and the finding of the cannabis in the car, the appellant was handcuffed and brought to the police station where he was interrogated and about 8.15pm he made the statement that there was ganja stored in his house. With that information the police party went to the appellant's house about 11.15pm and, there, the appellant allegedly pointed out where the cannabis was. Against the backdrop of those facts, the way the appellant was interrogated was unfair and oppressive. This was never considered by the trial judge (see paras 19, 20–21).

(2) On the facts of the instant case, there was grave doubt as to the voluntariness of the s 27 information. For that reason, the trial judge should not have admitted it as it had an adverse effect on the fairness of the proceedings against the appellant. With the exclusion of that information there was insufficient evidence to support the conviction on the second charge (see paras 21–22).

(3) Although the admissibility of s 27 information did not depend on its voluntary nature, the court had discretion to exclude such information if it was not given voluntarily or was obtained in an oppressive manner or by improper methods on the ground it had an adverse effect on the fairness of the proceedings (see para 17).

(4) The irresistible inferences that could be drawn from the circumstances surrounding the first charge was that the appellant knew all along about the cannabis found in the car and that, as the quantity of cannabis was much larger than what was likely to be used for personal consumption, the appellant was at the material time conveying the drug from one place to another for the purpose of trafficking. The cannabis was found in very close proximity to the appellant in the car. His demeanour and conduct when surrounded by the police also showed his awareness of the cannabis in the car. He attempted to reverse the car to flee and avoid arrest and he refused to unlock the car doors. These were reactions driven by guilt (see paras 13 & 15).

[Bahasa Malaysia summary

Perayu telah disabitkan dan dihukum mati oleh Mahkamah Tinggi atas dua tuduhan mengedar kanabis di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952. Tuduhan pertama adalah berkaitan dengan 769g kanabis manakala tuduhan kedua adalah berkaitan 7,415g dadah. Berkenaan dengan tuduhan pertama, adalah menjadi kes pihak pendakwaan bahawa pihak polis bertindak berdasarkan maklumat ternampak perayu yang memandu secara bersendirian di dalam kenderaan memasuki lorong berdekatan dengan sebuah sekolah dalam 7.45 suatu petang. Polis menghalang kedua-dua hujung lorong tersebut

dengan kenderaan mereka. Perayu cuba mengundurkan kenderaannya keluar daripada lorong tersebut tetapi telah terlanggar dengan salah sebuah kenderaan polis. Mengikut keterangan meskipun penolong pegawai polis telah memperkenalkan diri beliau kepada perayu, perayu enggan keluar daripada kenderaan dan menguncikan diri, yang mana memaksa perayu untuk memecahkan tingkap pintu dan menahan perayu. Polis telah menjumpai kanabis di dalam sampul di bawah tempat duduk pemandu beserta sebuah kotak berdekatan dengan brek tangan. Perayu kemudiannya dibawa ke balai polis dan disoal siasat dan 3 1/2 jam kemudian, dengan maklumat yang diperoleh daripadanya, perayu telah dibawa ke rumahnya di mana dia didakwa telah memberitahu polis tentang kewujudan lebih banyak lagi kanabis yang disimpan di dalam karung guni di dalam dapur. Dalam rayuannya terhadap sabitan dan hukuman, perayu menafikan bahawa dia mempunyai sebarang pengetahuan mengenai dadah tersebut dan bahawa paling tidaknya, dia hanya patut didapati bersalah untuk milikan dan bukan pengedaran. Dia juga berhujah bahawa hakim bicara seharusnya mengecualikan maklumat yang diperolehi daripadanya semasa soal siasat memandangkan ianya diperoleh secara tidak adil dan di dalam keadaan tertindas. Mahkamah perbicaraan memutuskan semasa perbicaraan di dalam perbicaraan bahawa maklumat yang diberikan oleh perayu telah diberikan secara sukarela.

Diputuskan, menolak rayuan terhadap tuduhan pertama dan mengesahkan sabitan dan hukuman dan mengetepikan sabitan dan hukuman berkenaan dengan tuduhan kedua:

(1) Tidak terdapat pengamatan kehakiman yang mencukupi oleh hakim bicara tentang keterangan di hadapan beliau akan kesukarelaan maklumat yang diberikan oleh perayu di bawah s 27 Akta Keterangan 1950. Berikutan serbuan oleh pihak polis terhadap kenderaannya lebih kurang 7.45 malam, dan dapatan akan kanabis di dalam kenderaan tersebut, perayu telah digari dan dibawa ke balai polis di mana dia telah disoal siasat dan pada 8.15 malam, dia telah membuat kenyataan bahawa terdapat ganja yang disimpan di dalam rumahnya. Dengan maklumat tersebut pihak polis telah pergi ke rumah perayu pada 11.15 malam dan, di situ, perayu didakwa telah menunjukkan di mana kanabis tersebut berada. Berdasarkan latar belakang fakta tersebut, cara perayu telah disoal siasat adalah tidak adil dan bersifat menindas. Perkara ini tidak pernah dipertimbangkan oleh hakim bicara (lihat perenggan 19, 20–21).

(2) Berdasarkan fakta kes, terdapat keraguan yang serius mengenai kesukarelaan maklumat s 27. Oleh sebab demikian, hakim bicara tidak seharusnya memasukkan maklumat tersebut memandangkan terdapat kesan bertentangan terhadap keadilan prosiding-prosiding terhadap perayu. Dengan pengecualian maklumat tersebut terdapat keterangan yang tidak mencukupi untuk menyokong sabitan tuduhan kedua (lihat perenggan 21–22).

(3) Meskipun penerimaan maklumat s 27 tidak bergantung kepada sifat sukarela, mahkamah mempunyai budi bicara untuk mengecualikan maklumat sedemikian sekiranya ia tidak diberikan secara sukarela atau telah diberikan di dalam keadaan ditindas atau dengan cara yang tidak betul atas dasar bahawa terdapat kesan bertentangan terhadap keadilan prosiding-prosiding (lihat perenggan 17).

(4) Inferens yang tidak dapat dielakkan yang boleh dibuat daripada keadaan sekeliling tuduhan pertama adalah bahawa perayu selama ini tahu tentang kanabis yang ditemui di dalam kenderaan dan bahawa, memandangkan kuantiti kanabis adalah lebih banyak daripada apa yang patut digunakan untuk kegunaan sendiri, perayu pada masa matan telah membawa dadah tersebut daripada satu tempat ke tempat yang lain untuk tujuan pengedaran. Kanabis telah dijumpai berdekatan dengan perayu di dalam kenderaan. Tingkah laku dan tindakannya apabila dikepung polis juga menunjukkan pengetahuannya akan kanabis di dalam kenderaan. Dia cuba untuk mengundurkan kenderaan untuk melarikan diri dan mengelak daripada ditahan dan dia enggan membuka pintu kenderaan. Reaksi-reaksi tersebut adalah disebabkan oleh rasa bersalah (lihat perenggan 13 & 15).]

Notes

For cases on admissibility depends on voluntariness, see 7(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2175–2176.

Cases referred to

Davendar Singh a/l Sher Singh v Pendakwa Raya [2012] MLJU 321; [2012] 3 AMR 489, CA (refd)

Francis Antonysamy v PP [2005] 3 MLJ 389; [2005] 2 CLJ 481, FC (refd)

Goi Ching Ang v PP [1999] 1 MLJ 507, FC (refd)

Hasibullah bin Mohd Ghazali v PP [1993] 3 MLJ 321; [1993] 4 CLJ 535, SC (folld)

Mohamad Yazri bin Minhat v PP [2003] 2 MLJ 241, CA (refd)

Ong Ah Chuan v PP Koh Chai Cheng v PP [1981] 1 MLJ 64, PC (refd)

Parlan bin Dadeh v PP [2008] 6 MLJ 19; [2009] 1 CLJ 717, FC (refd)

PP v Karim bin AB Jabar [2008] 3 MLJ 685; [2006] 5 CLJ 173, CA (refd)

R v Priestly (1965) 51 Cr App Rep 1 (refd)

Samundee Devan a/l Muthu Kerishnan v PP [2010] 2 MLJ 607; [2010] 3 CLJ 269, FC (refd)

Venkatesan Chinnasami v PP [2012] 5 MLRA 680, CA (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 2, 39B(1)(a)
Evidence Act 1950 s 27

Appeal from: Criminal Trial Nos 45–7 of 2007 and 45–25 of 2008 (High Court, Ipoh)

Afifuddin Ahmad Hafifi (Salehuddin Saidin & Associates) for the appellant.
Najib Zakaria (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Azahar Mohamed JCA (delivering judgment of the court):

[1] In the High Court, Sazali bin Jemali ('the appellant') was charged and tried for two charges of drugs trafficking under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA') as follows:

First charge (Case No 45–7 of 2007)

Bahawa kamu pada 13 Disember 2006, lebih kurang jam 7.45 malam di Lorong Sekolah Jenis Kebangsaan Cina Pei Chin, Jalan Taiping, Bruas, di dalam Daerah Manjung, di dalam Negeri Perak, telah mengedar dadah berbahaya, iaitu 769 gram Cannabis, dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

Second charge (Case No 45–25 of 2008)

Bahawa kamu pada 13 Disember 2006, jam lebih kurang 11.15 malam di AH 55, Jalan 5, Taman Raja Idris, Pokok Assam, Taiping di dalam daerah Larut Matang, Negeri Perak, telah didapati mengedar dadah berbahaya iaitu 7,415 gram Cannabis dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah Seksyen 39B(2) Akta yang sama.

[2] Both the charges were tried together at one trial before the learned judicial commissioner ('JC') in the High Court at Ipoh. The learned JC at the conclusion of the trial convicted the appellant on both the charges and sentenced him to the mandatory death penalty prescribed by the DDA. Aggrieved by that decision, the appellant then appealed to this court.

[3] We heard his appeal, wherein at the conclusion we unanimously dismissed his appeal in respect of the first charge. We affirmed the conviction and sentence on the first charge. In respect of the second charge, we allowed it and as a result, the conviction was quashed and the sentence set aside. We now give our reasons for so deciding.

[4] The facts of the case have been fully set out in the judgment of the learned JC. Very briefly, the facts adduced by the prosecution in the trial before the learned JC giving rise to both the charges against the appellant were as follows.

On 13 December 2006 at about 7pm, acting on information received, Chief Inspector Ramesh a/l Nagayah ('PW7') and a police raiding team carried out surveillance on a Proton Gen 2 bearing registration No AFN 9627 ('the car') within the vicinity of Lorong Sekolah Jenis Kebangsaan Cina Pei Chin, Jalan Taiping, Bruas, Manjung ('the targeted area').

[5] At around 7.45pm, while PW7 and his raiding team was keeping watch in an unmarked car at the targeted area, he saw the car coming from the direction of Taiping entering into Bruas-Setiawan road and subsequently moving slowly into the lane to Sekolah Jenis Kebangsaan Cina Pei Chin. The appellant was seen driving the car and no one else was with him. PW7 then instructed his driver to follow behind the car. At that point of time, by way of walkie-talkie communication, PW7 also instructed another police raiding team waiting at the lane to Sekolah Jenis Kebangsaan Cina Pei Chin to put up a barrier with a small lorry whereby the small lorry would engage the car from the front. PW7 then instructed his driver to block the car from behind. In this regard, the material part of the evidence of PW7 is as follows:

> Kami berjaya menahan kereta itu dengan halangan lori dari arah hadapannya dan kereta saya di bahagian belakang kereta sasaran. Apabila halangan lori dari hadapan, kereta sasaran cuba mengundurkan hampir melanggar kereta yang saya naiki — kereta itu pun berhenti. Saya bersama anggota saya keluar daripada kereta, kami mengepung kereta sasaran berkaitan.
>
> Saya terus berlari ke pintu pemandu, buka pintu sambil kenalkan dm saya sebagai polis dengan tunjukkan kad kuasa.
>
> Saya cuba buka pintu tetapi ia berkunci, saya arahkan pemandunya membuka pintu berkali-kali tetapi dia tidak membukanya. Saya ambil seketul batu di situ dan pecahkan cermin pintu sebelah pemandu — lepas daripada ini saya berjaya membuka pintu selepas buka lock pintu daripada luar kereta.

[6] PW7 then told the appellant to come out from the car. PW7 conducted a body search on the appellant but nothing incriminating was found. The car was subjected to a thorough search by PW7, resulting in the recovery of the following offending items:

(a) an envelope containing a slab of compressed dried leaves suspected to be cannabis was found under the driver's seat; and

(b) a small blue bag containing a slab of compressed dried leaves suspected to be cannabis was found in a box located near the handbrake.

[7] These two slabs of compressed dried leaves were subsequently sent to the chemist, Encik Ramlee bin Ibrahim ('PW5'), for chemical examination and analysis who confirmed that the dried leaves were found to be cannabis as defined under s 2 of the DDA weighing in total 769g. This formed the subject matter of the first charge.

[8] In the course of police investigation, while under detention, the appellant gave certain information to PW7. With that information, PW7 and his raiding team led by the appellant went to the appellant's house at No AH 55, Jalan 5, Taman Raja Idris, Pokok Assam, Taiping. Continuing with his evidence, this is what PW7 said:

> Pada jam lebih kurang 11.15 malam, kami sampai di depan sebuah rumah teres satu tingkat — rumah tepi. Pintu pagar rumah tertutup tapi tidak berkunci. Salah seorang anggota telah membuka gate itu dan kami semua telah keluar daripada kereta masing-masing bersama OKT. OKT telah membawa kami ke bahagian kanan rumah dan sampai di satu tempat di mana terdapatnya meja dapur kayu/arang yang dibuat daripada simen. Di situ OKT telah tunjukkan dengan tangan yang sedang bergari ke arah bawah dapur sambil mengatakan 'ada ganja di dalam guni di bawah situ' — ke arah bawah dapur.
>
> Pada masa itu terdapat papan lapis yang menutup bahagian bawah dapur. Saya alihkan papan lapis itu dan di bawah meja itu terdapat satu guni (hijau putih) bertulis white sugar. Saya telah keluarkan guni itu dengan dalam kehadiran OKT. Daripada guni itu dikeluarkan 9 ketulan mampat daun-daun kering. Disyaki ganja berbalut aluminium foil dan plastik lutsinar.

[9] The nine slabs of compressed dried leaves were also sent to PW5 for chemical examination and analysis who confirmed that the dried leaves were found to be cannabis as defined under s 2 of the DDA weighing in total 7,418g. This formed the subject matter of the second charge.

[10] At the conclusion of the case for the prosecution, the learned JC came to the finding that the prosecution had made out a prima facie case against the appellant and therefore called upon the appellant to enter his defence in respect of both the charges.

[11] The appellant elected to give evidence on oath. He also called four other witnesses to support his defence that he had no knowledge of the cannabis found in the car and in the gunny sack found by the police at the kitchen of the appellant's house.

[12] When the appeal came before us, in respect of the first charge, the appellant raised two principal grounds in support of his appeal. The first relates to the issue of possession. Learned counsel for the appellant argued that the appellant was not the sole user of the car and that others too had access to the car and could have placed and concealed the cannabis there. Having regard to the particular circumstances of the present case, we found no merit in this argument. The same argument was canvassed before the learned JC. The learned JC in his judgment had referred this defence and had carefully

considered it. In relation to this, the learned JC after carefully reviewing the evidence made specific findings concerning the issue. This is what the learned JC said in his judgment:

> Kereta berkaitan pula berada di bawah kawalan tertuduh sejak awal pagi pada tarikh 13.12.06 sehingga dia tertangkap. Pendakwaan juga telah membentangkan beberapa perbuatan tertuduh seperti cuba untuk melarikan din dengan mengundurkan keretanya, keengganan membuka pintu kereta malah menguncikannya walaupun SP7 telah memperkenalkan dirinya sewaktu serbuan dibuat, telah menjadikan satu siri perbuatan yang relevan yang membolehkan satu inferensi dibuat bahawa tertuduh mempunyai pengetahuan tentang kewujudan barang kes berkaitan di dalam keretanya itu.

In another part of his judgment, the learned JC said:

> Nampaknya saksi-saksi panggilan tertuduh bagi menyokong versi pembelaannya termasuk isterinya sendiri, tidak dapat menolong dalam usahanya menimbulkan apa-apa kesamaran kepada kes pendakwaan. Saksi-saksi panggilannya itu bukan sahaja tidak menyokongnya tetapi telah bertukar kepada suatu senario yang mengenepikan (*exclude*) apa-apa pembabitan atau syak kepada penglibatan mana-mana individu yang menyatakan bagaimana dadah-dadah dalam kereta, ….

[13] In our judgment, on the factual matrix of the present case, the learned JC was entitled and correct in making such a finding. It is not disputed that the cannabis were found hidden under the driver's seat and in a box located near the handbrake. The offending exhibits were in a very close proximity to the appellant. The appellant was the driver of the car. No one else was with him at that time. The next point which we think has a strong bearing on the issue is the demeanour and conduct of the appellant. The appellant tried to reverse the car in attempting to flee and avoid arrest. PW7 introduced himself as police. Despite that, PW7 had to smash the window screen of the car in order to forcefully open the door of the car. The appellant's demeanour and conduct at that point of time would show that the appellant was aware of the cannabis hidden in the car (see: *Parlan bin Dadeh v Public Prosecutor* [2008] 6 MLJ 19; [2009] 1 CLJ 717 and *Samundee Devan a/l Muthu Kerishnan v Public Prosecutor* [2010] 2 MLJ 607; [2010] 3 CLJ 269). It was a reaction driven by guilt. In our judgment, the totality of the evidence, the surrounding circumstances and the conduct of the appellant when taken together irresistibly point to the appellant having knowledge of the offending drug at the material time. The irresistible inference that can be drawn in the circumstances is that the appellant all along knew about the cannabis found in the car.

[14] This brings us to the second ground. Learned counsel argued that the act of transporting by the appellant in the instant case fell short to constitute an act of trafficking, having regard to the definition under s 2 of the DDA, which defines the offence as:

'trafficking' includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, *transporting*, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug otherwise than under the authority of this Act or the regulations made under the Act.

[15] Learned counsel then argued that the appellant was in passive possession of the cannabis. On the available evidence, taken at its highest, learned counsel argued that the prosecution could only prove the offence of possession of the cannabis against the appellant. We found ourselves quite unable to agree with learned counsel's argument. It will be recalled that at the material time and place, as stated in the first charge, the appellant was found conveying the cannabis in question in the car. In our view, the quantity of the cannabis was an amount much larger than was likely to be used for the appellant's own consumption, if any. The proper and only irresistible inference to be drawn from the facts and the circumstances must be that the appellant at the material time was conveying from one place to another the cannabis for the purpose of trafficking it to another party (see *Ong Ah Chuan v Public Prosecutor Koh Chai Cheng v Public Prosecutor* [1981] 1 MLJ 64, *Public Prosecutor v Karim bin AB Jabar* [2008] 3 MLJ 685; [2006] 5 CLJ 173, *Mohamad Yazri bin Minhat v Public Prosecutor* [2003] 2 MLJ 241 and *Venkatesan Chinnasami v Public Prosecutor* [2012] 5 MLRA 680).

[16] We therefore dismissed the appellant's appeal in respect of the first charge. There is more than sufficient admissible evidence contained in the appeal records before us to support the learned JC's findings and conclusion of facts in respect of the first charge. We found the conviction safe. We had therefore affirmed the conviction and the sentence of death imposed by the learned JC upon the appellant in relation to the first charge.

[17] We turn next to the appellant's appeal in respect of the second charge. In respect of the second charge, the prosecution's case rested entirely on the evidence of PW7 who testified on the discovery of the cannabis at the appellant's house as a result of s 27 of the Evidence Act 1950 information given by the appellant himself during his interrogation by PW7. It is true that the admissibility of s 27 information does not depend on its voluntary nature (see *Francis Antonysamy v Public Prosecutor* [2005] 3 MLJ 389; [2005] 2 CLJ 481 and *Goi Ching Ang v Public Prosecutor* [1999] 1 MLJ 507). However, the court has a discretion to exclude s 27 information which was not given voluntarily or obtained in an oppressive manner or by improper methods on the ground that it had an adverse effect on the fairness of the proceedings. In this regard, the Federal Court in *Goi Ching Ang v Public Prosecutor* said:

> Fairness requires fair trial which, in turn, needs fair procedure. Fair process requires that the legitimate interest of both the prosecution and the defence are adequately provided for. While the police ought to be given a reasonable opportunity to question suspects and accused persons, in its investigation, the accused must also be reasonably protected from the danger of extraction of unreliable statements and of statements (even if reliable) by some improper means. Evidence obtained in an oppressive manner by force or against the wishes of an accused person or by trick or by conduct of which the police ought not to take advantage, would operate unfairly against the accused and should in the discretion of the court be rejected for admission. The court should ensure that the standards of propriety in obtaining s 27 information are scrupulously followed in the police station.

[18] Coming back to the present case, a challenge was mounted during the trial before the learned JC by the appellant as to the voluntariness of the s 27 information. The learned JC conducted a trial within a trial to determine the issue. In relation to this, the learned JC made a finding that the s 27 information of the appellant was voluntarily made.

[19] We are mindful of the principle of law that in respect of an appeal which turns upon a question of fact, an appellate court is generally very reluctant to disturb a finding of fact by the trial judge for the reason that as trier of fact, the trial judge has audio-visual advantage which we do not have. Nonetheless, it would be opened to us to interfere with the finding made by a trial judge if such a finding is not supported by evidence or the decision is against the weight of the evidence or there is no proper judicial evaluation of the evidence or there is misdirection in law or the trial court has fundamentally misdirected itself (see *Davendar Singh a/l Sher Singh v Pendakwa Raya* [2012] MLJU 321; [2012] 3 AMR 489). In the present case, in our view, there was insufficient judicial appreciation by the learned JC of the whole evidence presented before him concerning the voluntary character of the s 27 information. The evidence led by the prosecution showed that an ambush was conducted by a police team at around 7.45pm on the car driven by the appellant. After the cannabis in question were found hidden under the driver's seat and in a box located near the handbrake, the appellant was then handcuffed and brought to the police station. There, the appellant was interrogated by PW7 and his team. During the interrogation, at about 8.15pm, the appellant gave the following information to PW7:

> Saya ada menyimpan ganja di tepi rumah saya.

[20] With that information, PW7 and his raiding team led by the appellant went to the appellant's house at No AH 55, Jalan 5, Taman Raja Idris, Pokok Assam, Taiping. They reached there around 11.15pm. Subsequently, the appellant pointed out to the location where the cannabis in question were hidden.

[21] Against the backdrop of the above, citing the case of *Hasibullah bin Mohd Ghazali v Public Prosecutor* [1993] 3 MLJ 321; [1993] 4 CLJ 535, learned counsel for the appellant argued that the way the appellant was interrogated was unfair and was consequently oppressive. This was never considered by the learned JC. In our judgment, based on those facts, there is merit in the argument of learned counsel to the effect that the s 27 information was given under oppressive circumstances. The learned JC did not direct his mind along these lines. In *R v Priestly* (1965) 51 Cr App Rep 1, the term 'oppression' has been defined as 'something which tends to sap and has sapped that free will which must exist before a confession is voluntary'. Our courts have adopted this definition as can be seen in *Hasibullah bin Mohd Ghazali v Public Prosecutor*. In our judgment, on the facts of the present case, there is grave doubt as to the voluntariness of the s 27 information. For that reason, the learned JC ought not to have admitted it as it had an adverse effect on the fairness of the proceedings against the appellant.

[22] With the exclusion of the information, there is insufficient evidence to support the conviction of the appellant on the second charge. The upshot of all this is that we were of the view that the appellant's conviction on the second charge was wholly unsafe. The appeal in respect of the second charge was therefore allowed. Accordingly, we quashed and set aside the conviction and the sentence against the appellant in respect of the second charge.

Appeal against the first charge dismissed and conviction and sentence thereto affirmed and conviction and sentence in respect of second charge set aside.

Reported by Ashok Kumar